

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.1501 Claims for Credit – Limitations -- Procedure
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TITLE 86: REVENUE

**PART 130
RETAILERS' OCCUPATION TAX**

SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section 130.1501 Claims for Credit--Limitations--Procedure

a) Limitations Upon Claims

- 1) Where a taxpayer under the Retailers' Occupation Tax Act pays to the Department an amount of tax or penalty or interest not due under the provisions of the Act, either as the result of a mistake of fact or an error of law, such taxpayer may file a claim for credit with the Department. Beginning August 17, 1995, tax is deemed to be erroneously paid by a retailer when the manufacturer of a motor vehicle sold by the retailer accepts the return of that automobile and refunds to the purchaser the purchase price of the vehicle, as provided in Section 3 of the New Vehicle Buyer Protection Act [815 ILCS 380/3]. The claim is limited to taxes applicable to the purchase price of the automobile refunded to the consumer, which includes all collateral charges required to be included in the sales tax calculation (e.g., documentary fees), but does not include any reasonable allowance for consumer use of the automobile deducted from the purchase price by the manufacturer. Retailers filing such claims must comply with all requirements of this Section.
- 2) The Department cannot approve any claim for credit unless the proof submitted in support thereof clearly establishes that the claimant has borne the burden of the tax erroneously paid or that he has unconditionally repaid the amount of the tax to his vendee from whom he has collected such amount. In the latter event, the claimant must also prove that his vendee has borne the burden of such amount or has unconditionally repaid persons to whom such vendee has shifted the burden of such amount (see Section 6 of the Retailers' Occupation Tax Act). The retailer will be considered to have satisfied the unconditional repayment requirement where it provides its purchaser with an instrument upon which the purchaser can make a demand upon the retailer/claimant for payment of the tax recovered if the claim is allowed. The retailer's provision of unconditional promissory notes or irrevocable credit memoranda to its purchasers who paid tax in error would satisfy this requirement. The purpose of requiring the retailer to make an unconditional repayment to its purchasers is to prevent unjust enrichment on the part of the retailer. Therefore, in order to establish that it was not unjustly enriched, the retailer filing a claim for credit must be able to demonstrate that it gave unconditional promissory notes or irrevocable credit memoranda to its purchasers who paid tax in error to the retailer.

- 3) In addition, if the Retailers' Occupation Tax was paid on receipts from a sale made on or after August 1, 1955, no credit shall be allowed for any such amount paid by or collected from any claimant unless it shall appear that the claimant has unconditionally repaid, to the purchaser, any amount collected from the purchaser and retained by the claimant with respect to the same transaction under the Use Tax Act.
- 4) The Department cannot approve any claim for credit to the extent that the amount claimed is an amount which has been paid (voluntarily or involuntarily) in total or partial liquidation of an assessment which had become final before the claim for credit to recover the amount so paid is filed with the Department, or if paid in total or partial liquidation of a judgment, order or decree of court. Also, all claims for credit are subject to the statute of limitations, as follows:

Provided that as to any claim for credit filed with the Department on and after each January 1 and July 1 no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under the Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited;...except that if both the Department and the taxpayer have agreed to an extension of time to issue a notice of tax liability as provided in Section 4 of the Act, such claim may be filed at any time prior to the expiration of the period agreed upon. (Section 6 of the Act)

This means that the normal statute of limitations will vary from 3 to 3 ½ years as shown in the following examples:

- A) On June 29, 1999 a taxpayer files a claim with the Department. The credit may be allowed for amounts paid on or after January 1, 1996. The credit will not be allowed for amounts paid on or before December 31, 1995.
- B) A taxpayer files a claim with the Department on July 2, 1999. In this case, amounts paid on or before June 30, 1996 were paid more than three years prior to July 1, 1999 and are not subject to refund.
- C) A taxpayer files a claim on November 30, 1999 for the months of October through December 1996. The claim will be processed by the Department because the time period that is open under the statute of limitations extends back through July 1, 1996.
- D) A taxpayer files a claim on January 5, 2000 for the month of October 1996 that was paid on November 20, 1996. The claim will not be approved by the Department because it is barred by the statute of limitations. A claim filed on January 5, 2000 only has open periods back through January 1, 1997.
- E) During the course of an audit of the periods July 1, 1996 through June 30, 1999, the taxpayer and the Department agree in writing to extend the statute of limitations through December 31, 2000 for the purpose of

issuing a notice of tax liability for the audit period. (See Section 4 of the Act.) This extension of the time for issuing a notice of tax liability also extends the period under which the taxpayer may file a claim. (See Section 6 of the Act.) Therefore a claim filed by the taxpayer on November 27, 2000 to recover a payment that was filed and paid on July 20, 1996 will be processed because the open time limit for filing claims extends back to July 1, 1996 pursuant to the agreement. This is true even if the payment was for the June 1996 monthly return (due date of July 20, 1996) and June 1996 is outside the statute of limitations period for issuing a notice of tax liability.

b) Filing of Claims

- 1) Claims for credit shall be prepared and filed upon forms provided by the Department. Each claim shall state:
 - A) the name and principal business address of the claimant;
 - B) the period covered by the claim;
 - C) the total amount of credit claimed, giving in detail the net amount of taxable receipts reported each month or other return period used by the claimant as the basis for filing returns in the period covered by the claim;
 - D) the total amount of tax paid for each return period;
 - E) receipts upon which tax liability is admitted for each return period;
 - F) the amount of receipts on which credit is claimed for each return period;
 - G) the tax due for each return period as corrected;
 - H) the amount of credit claimed for each return period;
 - I) reason or reasons why the amount, for which the claim is filed, is alleged to have been paid in error;
 - J) a list of the evidence (documentary or otherwise) which the claimant has available to establish his compliance with Section 6 as to bearing the burden of the tax for which he seeks credit;
 - K) payments or parts thereof (if any) included in the claim and paid by the claimant under protest;
 - L) sufficient information to identify any suit which involves the Act, and to which the claimant is a party; and
 - M) such other information as the Department may reasonably require.

- 2) Where the claimant is a corporation, the claim filed on behalf of such corporation shall be signed by the president, vice-president, secretary or treasurer or by the properly accredited agent of such corporation.
- 3) A claim for credit shall be considered to have been filed with the Department on the date upon which it is received by the Department. (See Sections 130.1201 and 130.1205 of this Part for further information regarding when claims are deemed to be "received" by the Department.)
- 4) Upon receipt of any claim for credit filed under the Act, any officer or employee of the Department, authorized in writing by the Director of Revenue to acknowledge receipt of such claims on behalf of the Department, shall execute on behalf of the Department, and shall deliver or mail to the claimant or his duly authorized agent, a written receipt, acknowledging that the claim has been filed with the Department, describing the claim in sufficient detail to identify it and stating the date upon which the claim was received by the Department.
- 5) Such written receipt shall be prima facie evidence that the Department received the claim described in such receipt and shall be prima facie evidence of the date when such claim was received by the Department.
- 6) In the absence of such a written receipt, the records of the Department as to when the claim was received by the Department, or as to whether or not the claim was received at all by the Department, shall be deemed to be prima facie correct upon these questions in the event of any dispute between the claimant (or his legal representative) and the Department concerning these questions. (See Section 6a of the Act.)

c) Procedure After Filing of Claims

- 1) The Department will examine each claim for credit as soon as practicable after such claim is filed and will notify the claimant (or his legal representative, if the claim is filed by such legal representative, or if the claimant has died or become incompetent and such legal representative has notified the Department of his appointment and qualification as such legal representative, or if the Department, on its own motion, has substituted such legal representative in the proceeding for the deceased or incompetent claimant) of its Tentative Determination of the amount of credit, if any, to which the claimant or his legal representative is entitled.
- 2) If such claimant, or the legal representative of a deceased or incompetent taxpayer, shall, within 60 days after the Department's Notice of Tentative Determination of Claim, file a protest and request a hearing, the Department shall give notice to the claimant, or to the legal representative of a deceased or incompetent taxpayer, of the time and place fixed for the hearing, and shall hold a hearing in conformity with the provisions of the Act, and pursuant thereto shall issue its Final Determination of the amount of credit, if any, found to be due as a result of the hearing, to the claimant, or to the legal representative of a deceased or incompetent taxpayer.

- 3) If a protest to the Department's Notice of Tentative Determination of Claim is not filed within 60 days and a request for a hearing is not made as provided in subsection (c)(2), the Notice shall thereupon become and operate as a Final Determination. (See Sections 6b and 6c of the Act.)
 - 4) If, following the above procedure, a credit is found to be due, as evidence thereof a credit memorandum for such amount shall be issued in the name of the claimant.
- d) Credit Memoranda in Amounts Less Than \$10. Where a credit memorandum issued by the Department has an outstanding balance of less than \$10 and one year or more has passed from the date of issuance of the credit memorandum, the Department may cancel the credit memorandum and issue a refund in lieu thereof for the remaining balance. The refund shall be delivered to the person entitled to receive delivery thereof.
- e) Use of Credit Memoranda or Refund Issued in Lieu Thereof to Satisfy Prior Rights of Department
- 1) If there is an established unpaid assessment or an admitted unpaid liability, or unpaid penalty, or unpaid amount of interest, against the claimant either under the Retailers' Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, any local Occupation or Use Tax administered by the Department, Section 4 of the Water Commission Act of 1985 [70 ILCS 3720/4], Section 5.01(b), (c) and (d) of the Local Mass Transit District Act [70 ILCS 3610/5.01], or Section 4.03(e), (f) and (g) of the Regional Transportation Authority Act [70 ILCS 3615/4.03], the amount of the credit or refund issued in lieu thereof shall be credited against the tax or penalty or interest due or to become due under the Retailers' Occupation Tax Act, or under the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, the Home Rule Municipal Retailers' Occupation Tax Act, the Non-Home Rule Municipal Retailers' Occupation Tax Act, any local Occupation or Use Tax administered by the Department, Section 4 of the Water Commission Act of 1985, Section 5.01(b), (c) and (d) of the Local Mass Transit District Act, or Section 4.03(e), (f) and (g) of the Regional Transportation Authority Act, from the person who made the erroneous payment.
 - 2) If the credit or refund issued in lieu thereof is in an amount less than that of the unpaid liability, it shall be applied pro tanto.
 - 3) If the amount of the credit or refund issued in lieu thereof exceeds that of the unpaid liability, after crediting an amount sufficient to liquidate or cancel out such unpaid liability, a new credit memorandum or refund shall be issued for an amount representing the difference between that of the original credit found to be due and that of the liability liquidated or paid as aforesaid, and such new credit memorandum or refund shall be delivered to the person entitled to receive delivery thereof, provided that no proceeding is pending against the claimant to establish an unpaid liability under the Retailers' Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, any local Occupation or Use Tax administered by the Department, Section 4 of the Water

Commission Act of 1985, Section 5.01(b), (c) and (d) of the Local Mass Transit District Act, or Section 4.03(e), (f) and (g) of the Regional Transportation Authority Act.

- 4) If a proceeding to establish such an unpaid liability is pending, the credit memorandum or refund in lieu thereof shall be held by the Department until such proceeding is concluded; and if such proceeding results in the issuance of an assessment which becomes final, the credit or refund in lieu thereof shall be applied by the Department, to the extent which may be necessary, in liquidation of such assessment, or any interest that may accrue thereon, and the balance of the credit or refund in lieu thereof, if any (after cancellation of the credit memorandum or refund in lieu thereof applied in liquidation of such liability), shall be issued in the form of a new credit memorandum or refund and delivered to the person entitled to receive delivery thereof.

(Source: Amended at 27 Ill. Reg. 795, effective January 3, 2003)